

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 13

MORGAN SERVICES, INC.<sup>1</sup>

EMPLOYER

AND

LOCAL 969, CHICAGO AND CENTRAL STATES JOINT BOARD, UNITE, AFL-CIO

UNION

AND

DAISY SANDERS

PETITIONER

Case 13-RD-2390

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record<sup>2</sup> in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.<sup>3</sup>

3. The labor organization(s) involved claim(s) to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:<sup>4</sup>

All full-time and regular part-time inside employees employed by the Employer at its plant currently located at 2330 Prairie, Chicago, Illinois; but excluding all executives, superintendents, timekeepers, chauffeurs, solicitors, collectors, engineers, route representatives, supervisors and guards as defined in the Act.

**DIRECTION OF ELECTION\***

An election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility

period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by Local 969, Chicago and Central States Joint Board, UNITE, AFL-CIO.

#### LIST OF VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Company*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359, fn. 17 (1994). Accordingly, it is hereby directed that within 7 days of the date of this Decision 2 copies of an election eligibility list, containing the full names and addresses of all of the eligible voters, shall be filed by the Employer with the undersigned Regional Director who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in **Suite 800, 200 West Adams Street, Chicago, Illinois 60606** on or before **March 12, 2002**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

#### RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, Franklin Court Building, 1099-14th Street, N.W., Washington, D.C. 20570**. This request must be received by the Board in Washington by **March 19, 2002**.

**DATED** March 5, 2002 at Chicago, Illinois.

/s/Elizabeth Kinney  
Regional Director, Region 13

\*/ The National Labor Relations Board provides the following rule with respect to the posting of election notices:

(a) Employers shall post copies of the Board's official Notice of Election in conspicuous places at least 3 full working days prior to 12:01 a.m. of the day of the election. In elections involving mail ballots, the election shall be deemed to have commenced the day the ballots are deposited by the Regional Director in the mail. In all cases, the notices shall remain posted until the end of the election.

(b) The term "working day" shall mean an entire 24-hour period excluding Saturdays, Sundays, and holidays.

(c) A party shall be estopped from objection to nonposting of notices if it is responsible for the nonposting. An employer shall be conclusively deemed to have received copies of the election notice for posting unless it notifies the Regional Director at least 5 working days prior to the commencement of the election that it has not received copies of the election notice.

347-6020-5033  
393-6061  
578-8075-6028  
347-4010-2000  
347-4040-5060

Procedural Issues  
Bar to Election-Contract

- 1/ The names of the parties appear as amended at the hearing.
- 2/ The arguments advanced by the parties at the hearing and in their post-hearing briefs have been carefully considered.
- 3/ The Employer is a corporation engaged in the business of laundry services.
- 4/ On February 8, 2002, Daisy Sanders, an employee of the bargaining unit, filed the instant petition. The Union contends that no question concerning representation can be raised at this time due to the pendency of an unfair labor practice charge and the parties' contract, which serves as a bar to the proceedings. The Union argues, therefore, that the instant petition should be dismissed. The Employer maintains that the Union's arguments are specious and argues that the decision concerning whether the pending unfair labor practice charge would affect the exercise of employees' free choice is solely within the discretion of the Regional Director. The Employer further maintains that the parties' collective bargaining agreement does not serve as a bar to these proceedings inasmuch as it is a contract whose duration is in excess of three years.

Contrary to the Union's contentions, it has long been settled that the determination of whether the pendency of an unfair labor practice charge precludes the raising of a question concerning representation is an administrative matter within the discretion of the Regional Director. **Holt Bros, 146 NLRB 383 (1964); Columbia Pictures Corp., 81 NLRB 1313 (1949)**. I am of the opinion that under the instant circumstances, employees can exercise their free choice in an election despite the pendency of the unfair labor practice case. Accordingly, I find that it will effectuate the purposes and policies of the Act to direct an election.

Further, I find that the parties' collective bargaining agreement, which is effective by its terms November 15, 1998 through November 14, 2002, does not serve as a bar to these proceedings inasmuch as it is a contract whose duration is in excess of three years. The Board's well-established contract bar policy holds that a contract will only serve as a bar to a petition for a period of three years. **General Cable Corp., 139 NLRB 1123, 1125 (1962)**. Where, as here, a petition is filed after the third anniversary date of the contract, with no new agreement made during the 60 day insulated period prior to the third year anniversary of the contract, such contract does not serve to bar the petition. **Dobbs International Services, Inc., 323 NLRB 1159 (1997)**.<sup>i</sup>

Based upon the foregoing, I shall direct an election in the bargaining unit described above. There are approximately 66 employees in the Unit.

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<sup>i</sup> The Union urges that I extend the contract bar doctrine to four years in the instant case, however, extension of the Board's well-established contract bar doctrine is a decision only the Board can make. Accordingly, I decline to do so.